

# **INITIAL STATEMENT OF REASONS**

**CCR §§ 2000, 2041, 2042, 2043, 2044**

## ***DECISION REVIEW PROCESS***

**RN-02-02**

### **CIRCUMSTANCES THAT THIS REGULATORY AMENDMENT IS INTENDED TO ADDRESS**

#### **INTRODUCTION**

This action will implement Senate Bill 778, Penal Code (PC) section 3041(b), setting out the process whereby the Board of Prison Terms (Board) reviews proposed decisions for inmates serving indeterminate terms. This action is also designed to modify and clarify decision review procedures for other decisions rendered by the Board.

Existing law (PC § 3041) requires that the Board meet with each inmate during the third year of incarceration for the purposes of documenting the inmate's conduct and activities, and that one year prior to the inmate's minimum eligible parole release date, the panel meet with the inmate to determine whether, after considering specific criteria, the inmate is eligible for parole.

California Code of Regulations (CCR), title 15, sections 2041 and 2042 provide the Board with the authority to conduct decision review of all hearing decisions. The purpose of the decision review process is to assure complete, accurate, consistent, and uniform decisions and the furtherance of public safety. Within a specified period of time, the review authority may 1) affirm the proposed decision, 2) order a new hearing, or 3) modify the decision without a new hearing. No decision shall be modified without a new hearing if the modification would be adverse to the parolee's interest. The Board bases its determination to disapprove or modify a decision on specific criteria outlined in CCR section 2042 and any information or comments received from the public pursuant to CCR section 2028.

Existing language at CCR section 2043 sets the effective dates for all proposed decisions, including progress hearings, to be effective 15 days after the date of the hearing, unless the decision is disapproved, the case is referred en banc, or a different effective date is stated in the proposed decision. Any proposed decision granting, modifying or denying a parole date for a life prisoner shall be effective 90 days after the hearing at which the proposed decision was made, unless a later effective date is stated. No decision is effective until reviewed by the decision review unit.

Pursuant to Penal Code section 3041, any person on the hearing panel may request review of any decision regarding parole to the full Board for an en banc review hearing. Penal Code section 3041.1 gives the Governor authority to request review of the grant or

denial of parole up to 90 days prior to a scheduled parole release date. When a request has been made, the full Board, sitting en banc, shall review the parole decision. A majority vote in favor of parole shall be required by the Board in order to grant parole to any prisoner.

## **PROPOSED AMENDMENTS**

The term “chairman” described in CCR section 2000 as the administrative head of the Board, is changed to “chairperson” to infer non-gender specific status and “full board” is added to the list of definitions to describe the functions of the full Board in public or at executive sessions.

The proposed amendments to CCR section 2041 are designed to more clearly set out the various types of hearings and the procedures that the BPT follows during the decision review process. The format has been restructured to address each type of hearing separately, specifying who shall review the proposed decision, the timeframe in which the decision shall be reviewed, the disposition decided upon, and the date that the decision shall become effective. Further modifications will more specifically indicate the outcome in the event the proposed decision is disapproved or modified by the review authority. In addition, language has been added to reflect that in the event new information is received that is adverse to a life prisoner, the new information will be forwarded to the prisoner and the attorney who will be afforded an opportunity to respond to that new information within a reasonable amount of time.

The addition of subsection (h) defines the consequences of a “modification of a decision which would be adverse to the prisoner’s or parolee’s interest,” and in which case, a “new hearing” would be ordered. Subsection (i) is added to provide the prisoner or parolee the opportunity to “waive” their rights to a new hearing and accept the suggested modifications. In the event the prisoner or parolee is represented by an attorney, they will be afforded ten days to consult with counsel concerning their waiver rights. Acceptance of the modified decision may not be appealed.

Proposed modifications to subsection (k) will delete specific language that is either redundant or no longer applicable and clarify existing language.

Proposed amendments to CCR section 2042 will more closely follow the recent amendments to Penal Code section 3041(b) which clarifies the criteria utilized in considering whether a proposed decision should be disapproved or modified. The Board shall determine whether the panel made an error of law, error of fact, or whether new information should be presented to the Board, any of which when corrected or considered by the Board, has a substantial likelihood of resulting in a substantially different decision upon a rehearing.

CCR section 2043 is amended to conform to recent changes in the Penal Code (§ 3041(b)) which now states that the effective date of any decision of the parole panel finding a life prisoner suitable for parole shall become final within 120 days of the date of

the hearing. In addition, language has been added to conform to existing language in Penal Code section 3042(b), stating that “no life prisoner shall be released on parole prior to 60 days from the date of the hearing.” Specific language has been deleted as it is either redundant or irrelevant in light of the proposed amendments in this action.

Proposed amendments to CCR section 2044 modify the timeframe, from a maximum of 45 days to a maximum of 60 days, within which the full Board shall consider any proposed decision referred by a member of the hearing panel or upon request of the Governor. Additional language is added to clarify the disposition of the decision should the Board agree/disagree with the decision of the panel.

### **NECESSITY**

These proposed regulatory amendments are necessary to implement Senate Bill 778 (PC § 3041(b)) and to provide clear and consistent guidelines in the decision review process. The decision review regulations are in need of restructuring to clearly represent the review of all proposed decisions, i.e., who shall review the decision, the timeframe within which the decision shall be made, the criteria utilized in establishing that decision, and the effective date of the decision. In addition, the proposed amendments are necessary to provide the prisoner and counsel the opportunity to respond in writing to any new adverse information received during the decision review process.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

### **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY**

The Board must determine that no reasonable alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.